IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Steven A. Bogen and Herbert H. Loeffler		
Application No.:	09/702,298	Group:	1797
Filed:	October 31, 2000	Examiner:	Lyle Alexander
Confirmation No.:	3668		
For:	Automated Slide Stainer with Slide Housing (As Amended)		

APPEAL BRIEF

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Sir:

This Appeal Brief is submitted pursuant to the Notice of Appeal received in the U.S. Patent and Trademark Office on June 2, 2009, and in support of the appeal from the final rejections set forth in the Office Action mailed on March 2, 2009 (the Office Action). The fee for filing a brief in support of an appeal is enclosed. A Petition for Extension of Time and the appropriate fee are being filed concurrently.

I. REAL PARTY IN INTEREST

The real party in interest is Dako Denmark A/S, Produktionsvej 42, DK-2600 Glostrup, Denmark. Dako Denmark A/S is the Assignee of the entire right, title, and interest in the subject application, by virtue of an Assignment recorded on April 7, 2008, at Reel 020762, Frames 0402–0406.

II. RELATED APPEALS AND INTERFERENCES

Appellants, the undersigned Attorney, and Assignee are not aware of any related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

U.S. Patent No. 6,180,061 (the '061 patent), to which this application claims priority, and U.S. Patent No. 6,183,693 (the '693 patent), which includes subject matter similar to that of the instant application, were involved in a settled infringement action. *CytoLogix Corporation v Ventana Medical Systems, Inc.*, 424 F.3d 1168 (Fed. Cir. 2005). In its decision, the appellate court sustained jury verdicts of infringement with respect to claims 8–14 of the '061 patent and claims 1–3 and 5–12 of the '693 patent. *Id.* The court remanded questions of obviousness with respect to claims 1–3, 5–7, and 15 of the '061 patent and reversed the jury verdict of infringement with respect to claim 13 of the '693 patent due to lack of substantial evidence. *Id.*

U.S. Patent Nos. 6,541,261 and 6,783,733, each of which includes subject matter similar to that of the instant application, were involved in a separate infringement action, since settled, for which a claim construction decision was handed down by the U.S. District Court for the District of Massachusetts on June 20, 2006.

The aforementioned decision and claim construction decision were previously cited in this case as noted in the Related Proceedings Appendix.

III. STATUS OF CLAIMS

Claims 3–18 have been finally rejected, and a copy of the claims appears in the Appendix of this Brief. Claims 3–18 were previously amended. Claims 1 and 2 were previously canceled. Claims 3–18 are being appealed herein.

IV. STATUS OF AMENDMENTS

All prior amendments have been entered in the application.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Applicants' independent Claims 3 and 11 are directed to a microscope slide stainer and a method of staining microscope slides, respectively, as described in Applicants' specification at least from page 7, line 1, to page 8, line 4; from page 9, line 8, to page 13, line 19; and in Figures 1, 5, 6, and 11A. For convenience, both independent claims are reproduced here:

3. A microscope slide stainer comprising:

a plurality of slide cavities into which microscope slides are inserted and into which liquids are dispensed, each cavity also containing a sufficient volume for liquid to cover a microscope slide;

a liquid dispenser including an orifice decoupled from each cavity from which liquid is dispensed from above into each cavity, said orifice and each cavity being mounted on separate structures that provide relative movement between the orifice and each cavity under microprocessor control so as to align the orifice over any selected cavity of the plurality of slide cavities; and

a liquid aspirator decoupled from each cavity, said aspirator being capable of removing liquid from the selected cavity.

11. A method of staining slides comprising:

mounting a plurality of slide cavities on a first structure and an orifice of a liquid dispenser on a second structure, the first and second structures being moveable relative to one another;

inserting a slide into one of the plurality of slide cavities, into which liquids can be dispensed, each cavity containing a sufficient volume for liquid to cover the slide;

providing relative movement between the first and second structures to provide relative movement between the plurality of slide cavities and the orifice under microprocessor control to align the orifice with a slide in a selected one of the plurality of slide cavities;

dispensing liquid from above into the selected cavity through the orifice, said liquid also contacting said slide; and

aspirating liquid from the selected cavity.

As shown in and described with respect to Applicants' Figure 5, embodiments of the stainer include a plurality of slide cavities in slide frames 510 . The slide frames 510, which sit on a structure called a slide rotor 504, each hold several microscope slides in slide positions 512a–512e, as shown in Figure 6.

A dispensing assembly 500 dispenses liquids from cartridge pumps CP into the cavities in the frames 510 via an orifice (nozzle tip 538) shown in Figure 9. (Figure 1 shows another

cartridge pump CP with a nozzle 5.) Because the cartridge pumps CP are mounted on a separate structure, i.e., reagent rotor 506, above the slide rotor 504, the nozzle tips 538/5 can be aligned over any of the slide cavities using a microprocessor (not shown) that controls the assembly 500. When the nozzle tip 538/5 is aligned over the selected slide cavity, a dispensing station DP actuates the cartridge pump CP, causing liquid to drip (i.e., fall from above) from the nozzle 538/5 of the cartridge pump CP into the slide cavity as shown in Figure 9.

The dispensing assembly 500 also includes a liquid aspirator with an extendable vacuum hose 544 that sucks reagent out of a particular slide cavity and into a vacuum bottle 572, as shown in FIG. 11A. Because the vacuum hose 544 is not coupled to the slide cavity, the slide rotor 504 can rotate to align a particular slide cavity with the aspirator.

Claim 10 recites further details of the liquid aspirator of Claim 1, namely, that the aspirator includes a vacuum bottle (vacuum bottle 572), a vacuum hose extending from the vacuum bottle (vacuum hose 544), and a vacuum hose transport mechanism "for bringing the end of the vacuum hose to the selected cavity" (vacuum hose transport mechanism 570). Claim 12 recites a corresponding method of aspirating liquid "by extending a vacuum hose to the selected cavity and collecting the liquid into a vacuum bottle."

Claims 17 and 18 recites a method of and complementary apparatus for "moving the cavities and a liquid aspirator relative to each other," which can be achieved by rotating the slide rotor 504 to align a given cavity with the aspirator, as described above and in page 13, lines 9–19, of the application as filed.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 3–18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Muller. In particular, the Office Action states that Muller teaches a method and apparatus for slide processing that can be combined with additional slide cavities to yield the apparatus and method recited in Applicants' claims.

Regarding slide cavities, the Office Action states that Muller's station input reservoir 116 "is placed over each slide and forms a *cavity* into which the appropriate fluids/reagents are dispensed to the slides. The *cavity* created by reservoir (116) supplied [sic] the fluids/reagents from above and meets the instant claims." 4:20–5:2 (emphasis in original). The Office Action further states that "the new limitations '… liquid is dispensed from above …' has been read on figure 18 where conduits (132, 133) are 'above' chamber (116) and supply the sample to the

chamber (116)." 3:8–10. The Examiner further maintains that Muller's reservoir 116 "is sequentially (e.g. relatively) moved onto each slide and creates a separate *cavity* on the slide." *Id.*, 4:5–6.

The Advisory Action mailed on May 21, 2009, further states the reservoir 116 is "a fluid dipsensing [sic] means that is above and decoupled from each slide containing cavity. The reservoir (116) was not cited as the cavity that contains the slide, but rather the cavity that provides the fluid to the chamber that contains the slide."

The Office Action states that column 4, lines 4+, of Muller teach a dispensing orifice that is "move[d] to a different chamber based upon the analysis and volume required." 2:17–18. The Office Action further states that "the new limitations '… liquid is dispensed from above …'" has been read on figure 18 where conduits (132, 133) are 'above' the chamber (116) and supply the sample to the chamber (116)." 3:8–10.

The Office Action states that Muller "is silent to the claimed '… mounted on separate structures …,'" 3:15–16, but states this could be remedied by adding more slide cavities. *Id.*, 3:15–17. (The Examiner responded to Applicants' Amendment of November 14, 2009, which describes the slide rotor 504 and reagent rotor 506 as separate structures, by stating that the slide rotor 504 and reagent rotor 506 are not presently claimed.)

According to the Office Action, Muller teaches microprocessor control of "the heating and movement of the sample to chambers of different volumes," 2:16–17, which has been read on the "claimed '… dispenser orifice and slide housing being capable of relative movement to each other under microprocessor control ….'" 2:18–20. The Office Action further states that "the new limitations '… separate structures that provide relative movement of the supply input between the orifice and each cavity …,'" 3:11–12, have been read on Muller's rotary valve 129, which the Examiner asserts "provides relative movement of each of the supply lines of reservoirs (R1–R11)." *Id.*, 3:13–14.

Regarding the liquid aspirator and aspiration, the Office Action further states that Muller's disclosure of removing fluid from processing chambers by suction or flowing washing fluid reads on the liquid aspirator recited in Claim 3. In particular, the Examiner states that Muller's reservoir 116 "is attached and detached to each slide and has been properly read on the claimed *decoupling* [of the liquid aspirator]." *Id.*, 5:8–9.

In addition, the Office Action states that Muller's quick connect/disconnect terminal connectors for modular processing station subassemblies read on the hose transport mechanism recited in claim 10. The Examiner concludes by stating that Muller teaches positioning the reservoir 116 on each slide and, therefore, teaches the vacuum hose transport mechanism of Claims 10, 17, and 18.

VII. ARGUMENT

Applicants submit that Muller does not disclose all the elements of Applicants' claims, and, therefore, does not render Applicants' claims obvious when combined with the ordinary skill in the art. "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983)(emphasis supplied). That is, "the claimed invention as a whole must be considered." MPEP § 2142.02. In addition, the Examiner must show that all the elements of Applicant's claimed display exist in the prior art. MPEP § 2143.03. In this case, the Examiner has not established a *prima facie* case of obviousness because the Examiner has neither considered the claimed invention as a whole nor found all the elements of Applicants' independent Claims 3 and 11 in Muller or elsewhere.

A. Description of Muller

Muller discloses an apparatus for sequential multi-step processing of slide surface portions. Muller's FIG. 20 shows an apparatus 111 capable of dispensing fluid from a set of reservoirs R1–R11 to a station input reservoir 116 via a twelve-position rotary valve 129. Once charged, the reservoir 116 transfers the fluid to a processing station 112, which "is adapted for processing of slide surface portions." Muller, 28:40–42.

In operation, the rotary valve 129 switches to allow liquid to flow from a specified reservoir (e.g., R1) to the station input reservoir 116. *Id.*, 32:57–36:38. When the valve 129 is set correctly, fluid flows from the reservoir R1 to the reservoir 116 via a fixed conduit 133. After the station input reservoir 116 is charged with fluid from the reservoir R1, the station input reservoir 116 discharges the fluid into the processing station 112 via another fixed conduit 114. Once the fluid reaches the processing station 112, it can be used to process the surface of a microscope slide at the processing station 112.

Muller's FIG. 18 shows the station input reservoir 116 in more detail, including the quick connect/disconnect couplings that connect the reservoir 116 to conduits 132 and 133. Lines 119 and 122 convey coolant through the station input reservoir 116 to keep the liquid in the station input reservoir 116 at a specified temperature. When the rotary valve 129 is positioned appropriately, "liquid can flow successfully from such an associated reservoir (in the present example, reservoir R1) through … conduit 133 into reservoir 116." *Id.*, 32:8–11. Pressurizing gas flows through conduit 132 to control the flow of liquid into the station input reservoir 116. Liquid flows out of the charged station input reservoir 116 to the processing station 112 via a third conduit 114. As shown in FIG. 18, all of the conduits are coupled to the reservoir 116.

Muller's FIG. 21 shows an alternative apparatus 140 that includes multiple station delivery reservoirs 116 and processing chambers 112 connected to a set of fluid reservoirs R1–R11 via rotary valves 129 and 140. As in Muller's FIG. 20, conduits 114 fix the positions of the station delivery reservoirs 116 relative to the processing stations 112. Muller discloses removing process fluids from the processing chambers 112 "either by suction, as with a syringe, or the like, or by flowing a washing fluid or the like (preferably liquid) through such chamber." *Id.*, 66:55–57. In the apparatus 140, "these fluids first pass through a station delivery reservoir 116 before entering the processing chamber 112" *Id.,* 67:26–28.

B. Muller's station input reservoir 116 does not form the slide cavities of Claims 3 and 11, nor is it the liquid dispenser of Claims 3 and 11.

The Office Action states that station input reservoir 116 "is placed over each slide and forms a *cavity* into which the appropriate fluids/reagents are dispensed to the slides. The *cavity* created by reservoir (116) supplied [sic] the fluids/reagents from above and meets the instant claims." 4:20–5:2 (emphasis in original). The Examiner further states that "the new limitations '… liquid is dispensed from above …' has been read on figure 18 where conduits (132, 133) are 'above' chamber (116) and supply the sample to the chamber (116)." *Id.*, 3:8–10. This suggests that the Examiner has interpreted the station input reservoir 116 as forming a slide cavity and the conduits 132, 133 as being the orifices that dispense liquid into the slide cavity.

The Advisory Action, on the other hand, states the reservoir 116 is "a fluid dipsensing [sic] means that is above and decoupled from each slide containing cavity. The reservoir (116) was not cited as the cavity that contains the slide, but rather the cavity that provides the fluid to

the chamber that contains the slide." That is, in the Advisory Action, the Examiner appears to have interpreted the station input reservoir 116 to be the liquid dispenser.

Under either interpretation, the claims distinguish Muller's reservoir 116. First, Muller's station input reservoir 116 does not form a cavity on each slide because, according to Muller, the reservoir 116 transfers the fluid to a processing station 112, which "is adapted for processing of slide surface portions." 28:40–42. Second, Muller's station input reservoir 116 is not

> a liquid dispenser including an orifice decoupled from each cavity from which liquid is dispensed from above into each cavity, said orifice and each cavity being mounted on separate structures that provide relative movement between the orifice and each cavity under microprocessor control so as to align the orifice over any selected cavity of the plurality of slide cavities

as recited in Claim 3. (Claim 11 recites a similar liquid dispenser.) As is discussed in greater detail below, Muller's station input reservoir 116 does not include a decoupled orifice and is, in fact, fixedly coupled to the processing station 112 by a conduit 114. Further, nothing in Muller suggests that the station input reservoir 116 can move relative to the processing station 112.

Given these differences, the station input reservoir 116 is not a slide cavity of Claim 3 or Claim 11; nor is it the liquid dispenser of Claim 3 or Claim 11.

C. Muller does not disclose an orifice that dispenses liquid from above into each slide cavity as recited in Claims 3 and 11

The Office Action states that column 4, lines 4+, of Muller teach a dispensing orifice. In fact, the cited section of Muller reads:

> [i]n another aspect, this invention provides a class of slide surface processing stations each of which is (a) individually both temperature controllable and chamber volume controllable, (b) utilizes relatively small volumes of treating fluids, (c) provides a flow pathway over slide surface portions which is laminar or approximately so, and (d) can be used for the entire step sequence of a multiple processing step procedure involving the surface portions of a single slide.

4:4–12. Although the cited section of Muller discloses processing stations with individually controllable chamber volumes, it does not disclose an orifice, much less "an orifice decoupled from each cavity from which liquid is dispensed from above into each cavity," as recited in Claim 3, or the orifice of Claim 11.

The Examiner also argues that Muller's conduits 132 and 133 are above the station input reservoir 116 and, therefore, meet the limitation of dispensing liquid from above recited in Claims 3 and 11. This suggests that the Examiner is reading conduits 132 and 133 on the orifices of Claims 3 and 11, which dispense liquid from above into a slide cavity. Although Muller's FIG. 18 shows that both conduits 132 and 133 are connected to the top of the station input reservoir 116, the station input reservoir 116 is not a slide cavity because it does not hold microscope slides. Thus, the conduits 132 and 133 do not dispense liquid from above into a slide cavity as do the orifices of Claims 3 and 11. Besides, Muller states that the conduit 132 carries pressurized gas, not liquid like the orifices of Claims 3 and 11.

D. Muller does not disclose an orifice or a slide cavity mounted on separate structures that provide relative movement so as to align the orifice over any selected cavity of the plurality of slide cavities as recited in Claims 3 and 11.

The Office Action states (1) that Muller is silent on separate structures, but it would be obvious to add more slide cavities to remedy this defect and (2) that Muller's rotary valve 129 provides the recited relative movement. Applicants believe that the Examiner may have misinterpreted how the separate structures relate to the orifice and the slide cavities, especially given the Examiner's comment that the slide rotor 504 and reagent rotor 506 are not presently claimed.

Adding more slide cavities to Muller does not fix Muller's deficiencies with respect to the structures of Claims 3 and 11. Muller describes a number of structures, including a processing station 112, a station input reservoir 116, and several reservoirs R1–R11, which are connected to each other by fixed conduits and valves. These structures do not include the orifices of Claims 3 and 11. Applicants therefore submit that adding more slide cavities to Muller does not yield an orifice and slide cavities mounted on separate structures that can move relative to each other as recited in Claims 3 and 11.

Further, Muller's rotary valve 129 does not provide relative movement between separate structures because, when the valve 129 switches, neither the reservoirs nor the valve moves. In fact, the valve 129 eliminates the need for the reservoirs to move. Thus, Muller's rotary valve 129 does not provide relative movement between separate structures as recited in Claims 3 and 11.

Besides, the valve 129 is between reagent reservoirs, and so cannot provide relative movement between a slide cavity and an orifice mounted on separate structures so as to align the orifice over any selected cavity of the plurality of slide cavities. As stated above, the station input reservoir 116 does not hold a slide and, therefore, is not a slide cavity. Similarly, the station input reservoir 116 is not an orifice and does not include an orifice that dispenses liquid from above, as recited in Claims 3 and 11. Likewise, reservoirs R1–R11 are not slide cavities or orifices either. Thus, Muller's rotary valve 129 does not provide relative movement between separate structures so as "to align the orifice with a slide in a selected one of the plurality of slide cavities," as recited in Claim 11, because Muller's valve 129 is not between a slide cavity and an orifice. Muller's valve 129 does not supply the relative movement between separate structures recited in Claim 3 for the same reason.

E. Muller does not disclose a liquid aspirator decoupled from each slide cavity as recited in Claim 3.

The Examiner states that the liquid aspirator of Claim 3 reads on Muller's disclosure of removing fluid from a chamber by suction or by flowing a washing fluid. The Examiner further suggests that the reservoir 116 is the aspirator because "the reservoir (116) is attached and detached to each slide and has been properly read on the claimed *decoupling* [of the aspirator]." Office Action, 5:8–9. Muller's FIGS. 18, 20, and 21 show that conduits 114, 132, 133, etc., fixedly couple the station input reservoir 116 to the other chambers, including the slide processing station 112 where slide processing occurs. In contrast, the liquid aspirator of Claim 3 is decoupled from slide cavities into which slides are inserted. Therefore, Muller's disclosure of removing fluid from a chamber does not read on Applicants' liquid aspirator because Muller's disclosure involves coupled (rather than decoupled) chambers.

Moreover, the Examiner's characterization of the reservoir 116 as an aspirator is inconsistent with the Examiner's assertion that the reservoir 116 forms cavities on microscope slides. As Claim 3 recites the slide cavity and aspirator as separate elements, the station input reservoir 116 cannot simultaneously form the recited slide cavities and the recited aspirator.

F. Muller does not disclose the vacuum bottle, vacuum hose, or vacuum hose transport mechanism of Claim 10 or extending a vacuum hose to the selected cavity and collecting the liquid into a vacuum bottle as in recited in Claim 12.

The Office Action states that Muller teaches quick connect/disconnect mechanisms and "positioning cavity (116) on each slide which include [sic] a vacuum hose," 5:12–13, which the Examiner maintains reads on the vacuum hose and vacuum hose transport mechanism of Claim 10. The Office Action does not identify a separate vacuum bottle in Muller. Muller teaches sucking liquid out of the processing chambers with a syringe or flushing liquid out of the processing chambers with washing fluid from the station input reservoir 116. That is, the reservoir 116 is used to push liquid through the chambers, not to suck liquid out of the chambers. Thus, the reservoir 116 does not serve as a vacuum bottle, nor is it coupled to a vacuum tube on a vacuum tube transport mechanism; as discussed above, all of the conduits attached to the reservoir 116 are fixed. As a result, Applicants submit that Muller does not supply the vacuum bottle, vacuum hose, or vacuum hose transport mechanism of Claim 10. Similarly, Muller does not disclose "extending a vacuum hose" as in Claim 12 because Muller's conduits are fixed.

G. Muller does not disclose moving the slide cavities and the liquid aspirator relative to each other before aspirating liquid from the selected cavity as in Claim 17 or an aspirator and slide cavities capable of relative movement or alignment as in Claim 18.

The Examiner's position seems to be that the Muller teaches positioning the station input reservoir 116 and a vacuum hose over each slide. As stated above, the station input reservoir 116 does not create slide cavities, much less suck liquids from them, because slide processing occurs elsewhere in Muller's system. In addition, the reservoir 116 is fixed in place with respect to all other components of Muller's system and is therefore incapable of relative movement or alignment. Thus, Muller does not disclose moving the slide cavities and the liquid aspirator relative to each other before aspirating liquid from the selected cavity as in Claims 17 and 18.

H. Conclusion

Muller does not teach all the elements of Applicants' independent Claims 3 and 11. In particular, Muller does not teach: (1) an orifice that dispenses liquid from above into each slide cavity; (2) an orifice and a slide cavity mounted on separate structures that provide relative movement so as to align the orifice over any selected cavity of the plurality slide cavities; or (3)

a liquid aspirator decoupled from each slide cavity as recited in Claim 3. Applicants also submit that the Examiner has not considered Claims 3 and 11 as respecitve wholes, but has focused on particular elements in the claims without considering their relationships to other elements in the claims.

Because Muller fails to teach all the elements of Claims 3 and 11, by itself or with additional slide mounting structures, Claims 3 and 11 patentably distinguish Muller. By extension, Claims 4–10 and 18, which depend from Claim 3, and Claims 12–17, which depend from Claim 11, patentably distinguish Muller for at least the above reasons as well.

Applicants further submit that Muller does not disclose the vacuum bottle, vacuum hose, and vacuum hose transport mechanism of Claim 10 or extending a vacuum hose as recited in Claim 12. Muller also does not disclose moving the slide cavities and the liquid aspirator relative to each other before aspirating liquid from the selected cavity as in Claim 17 or an aspirator and slide cavities capable of relative movement or alignment as in Claim 18. Thus, Applicants submit that Claims 10, 17, and 18 patentably distinguish Muller for these reasons as well.

Accordingly, Applicants respectfully request withdrawal of the rejection of Claims 3–18 under 35 U.S.C. § 103(a).

Respectfully submitted,

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CLAIMS APPENDIX

3. (Previously Presented) A microscope slide stainer comprising:

a plurality of slide cavities into which microscope slides are inserted and into which liquids are dispensed, each cavity also containing a sufficient volume for liquid to cover a microscope slide;

a liquid dispenser including an orifice decoupled from each cavity from which liquid is dispensed from above into each cavity, said orifice and each cavity being mounted on separate structures that provide relative movement between the orifice and each cavity under microprocessor control so as to align the orifice over any selected cavity of the plurality of slide cavities; and

a liquid aspirator decoupled from each cavity, said aspirator being capable of removing liquid from the selected cavity.

4. (Previously Presented) A microscope slide stainer as claimed in claim 3 further comprising a slide carrier capable of moving the slide that is contained in the selected cavity.

5. (Previously Presented) A microscope slide stainer as claimed in claim 4, further comprising a heater capable of heating the slide that is contained in the selected cavity.

6. (Previously Presented) A microscope slide stainer as claimed in claim 5 wherein the heating element is adjacent to the slide.

7. (Previously Presented) A microscope slide stainer as claimed in claim 4, further comprising a pressurized rinse bottle from which rinse fluid is dispensed into the cavity of said selected cavity.

8. (Previously Presented) A microscope slide stainer as claimed in claim 3, further comprising a heater capable of heating the slide that is contained in the selected cavity.

9. (Previously Presented) A microscope slide stainer as claimed in claim 8 wherein the heating element is adjacent to the slide.

10. (Previously Presented) A microscope slide stainer as claimed in claim 3, wherein the liquid aspirator comprises:

a vacuum bottle;

a vacuum hose extending from the vacuum bottle; and

a vacuum hose transport mechanism for bringing the end of the vacuum hose to the selected cavity.

11. (Previously Presented) A method of staining slides comprising:

mounting a plurality of slide cavities on a first structure and an orifice of a liquid dispenser on a second structure, the first and second structures being moveable relative to one another;

inserting a slide into one of the plurality of slide cavities, into which liquids can be dispensed, each cavity containing a sufficient volume for liquid to cover the slide;

providing relative movement between the first and second structures to provide relative movement between the plurality of slide cavities and the orifice under microprocessor control to align the orifice with a slide in a selected one of the plurality of slide cavities;

dispensing liquid from above into the selected cavity through the orifice, said liquid also contacting said slide; and

aspirating liquid from the selected cavity.

12. (Previously Presented) The method of claim 11, wherein the liquid is aspirated from the selected cavity by extending a vacuum hose to the selected cavity and collecting the liquid into a vacuum bottle.

13. (Previously Presented) The method of claim 12, further comprising heating the slide contained in the selected cavity.

14. (Previously Presented) The method of claim 11, further comprising heating the slide contained in the selected cavity.

15. (Previously Presented) The method of claim 11, further comprising moving a slide that is contained in a selected cavity.

16. (Previously Presented) The method of claim 15, further comprising adding rinse fluid from a pressurized rinse bottle.

17. (Previously Presented) The method of claim 11 further comprising the step of moving the cavities and a liquid aspirator relative to each other prior to aspirating liquid from the selected cavity.

18. (Previously Presented) A microscope slide stainer as claimed in claim 3 wherein the cavities and liquid aspirator are capable of relative movement under microprocessor control so as to align the aspirator with a slide in a selected one of the plurality of slide cavities.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

1. United States Court of Appeals for the Federal Court, *CytoLogix Corporation v. Ventana Medical Systems, Inc.*, Case No. 04-1446, Decision decided September 21, 2005, pp. 1–18.

   This decision was provided as Reference AW with the Supplemental Information Disclosure Statement entered into the record on February 18, 2006.

2. United States District Court for the District of Massachusetts, *CytoLogix Corporation v. Ventana Medical Systems, Inc.*, No. 04-11783-RWZ, Memorandum of the Decision issued June 20, 2006, pp. 1–7.

   A copy of this decision was provided with the Amendment filed in the present application on September 14, 2006.